

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	: 09/699,402	Confirmation No.	: 6990
First Named Inventor	: Masahiro MATSUO		
Filed	: October 31, 2000		
TC/A.U.	: 2131		
Examiner	: A K MOORTHY		
Docket No.	: 038849.49341		
Customer No.	: 23911		
Title	: Network Apparatus		

PETITION TO WITHDRAW FINALITY UNDER 37 C.F.R. § 1.181

Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully submit that the Office Action issued on February 21, 2008, was made final prematurely, and accordingly, the finality of this Office Action should be withdrawn.

Regarding the propriety of final rejections on a second or subsequent action on the merits, M.P.E.P. § 706.07(a) states that such actions:

shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

It is respectfully submitted that the new grounds of rejection in the final Office Action issued on February 21, 2008, was not necessitated by Applicants' amendment and was not based on information submitted in an Information

Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c). Instead, it is respectfully submitted that the Office Action issued on July 3, 2007, improperly rejected dependent claim 3 for anticipation, and when this claim was placed in independent form, by incorporating the elements of claim 2, from which claim 3 directly depended, into claim 3, it was recognized that the prior art references did not in fact expressly or inherently disclose all of the elements of dependent claim 3.

The non-final Office Action issued on July 3, 2007, rejected claims 2-20, 24 and 25 for anticipation by U.S. Patent No. 6,305,603 to Grunbok, Jr. et al. ("Grunbok").

A Reply was filed on December 3, 2007, amending claim 3 into independent form by including all of the elements of claim 2, from which claim 3 directly depended.

The final Office Action issued on February 21, 2008, rejected claims 2-20 and 24-26 for anticipation by U.S. Patent No. 5,867,821 to Ballantyne et al. ("Ballantyne").

Because Applicants' Reply merely amended claim 3 into independent form, the change in the grounds of rejection from anticipation by Grunbok to anticipation by Ballantyne is a new grounds of rejection that was not necessitated by Applicants' amendments. In other words, if Grunbok expressly


or inherently disclosed all of the elements of dependent claim 3, as stated in the Office Action issued on July 3, 2007, then it would not have been necessary to change the rejection of this claim to anticipation by Ballantyne when claim 3 was amended into independent form.

Because the new ground of rejection in the final Office Action issued on February 21, 2008, is not necessitated by Applicants amendments of the claims and is not based on information cited by the Applicants in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c), it is respectfully submitted that the finality of this Office Action is improper and should be withdrawn.

It is believed that no fees are due for this petition. However, if fees are required this paper should be considered as an authorization to charge Deposit Account No. 05-1323 (Docket #038849.49341) for such fees.

Respectfully submitted,

February 27, 2008



Stephen W. Palan
Registration No. 43,420

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
SWP